

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRI.WRIT PETITION NO. 2245 OF 2004.

Office notes, office
memoranda of Coram,
appearances, Court's
orders or directions
and Registrar's orders.

Court's or Judge's orders.

Shri A.M.Saraogi for the Petitioner.

Smt.P.H.Kantharia, A.P.P. for respondent 1/State.

Shri Girish Agarwal for respondents 2 to 6.

**CORAM : SMT.RAJNAJA DESAI &
ABHAY S.OKA, JJ.**

DATED : 30th November, 2004.

P.C.:

1. This writ petition filed under Articles 226 and 227 of the Constitution of India and under section 482 of the Code of Criminal Procedure, 1973, ("the Code for short) seeks quashing of F.I.R. No.MCR 02 of 2004 registered by respondent 1 i.e. M.I.D.C.Police Station, Andheri, Mumbai, against respondents 2 to 6 at the instance of the petitioner.

2. We have heard Mr.Saraogi, the learned Advocate appearing for the petitioner, Smt.Kantharia, A.P.P. appearing for respondent 1 and Mr. Agarwal appearing for respondents 2 to 6. Mr.Saraogi

contended that the petitioner and respondents 2 to 6 have amicably settled the matter and therefore the petitioner does not wish to prosecute the complaint. He submitted that the application to that effect was filed before the trial Court. Mr.Saraogi contended that since a complaint has been registered and since it will not be possible for the learned Magistrate to quash F.I.R. the petitioner has approached this Court by way of this petition. Mr.Agarwal, the learned Counsel appearing for respondents 2 to 6 confirmed that the matter is settled between the petitioner and respondents 2 to 6. Mr.Agarwal has tendered in this Court a fax dated 29 November 2004 sent by Proprietor of Onkar Enterprises wherein it is stated that the matter is amicably settled. Mr.Agarwal has also tendered in this Court a fax dated 29 November 2004 sent by M/s.Jain Vidyut, respondent 6 herein, stating that the matter is amicably settled. Both the fax messages dated 29 November 2004 are taken on record and marked Exhibit "A" (collectively). M/s.Onkar Enterprises is respondent 3 and respondent 2 is its proprietor. Respondents 4 and 5 are the partners of respondent 6 M/s.Jain Vidyut. In view of this Mr.Saraogi and Mr.Agarwal contended that this is a fit case where this Court should quash the FIR.

3. Since the matter is settled out of Court, we see no reason why the FIR should not be quashed as that would serve the ends of justice. In this connection, we may refer to the judgment of the Supreme Court in **State of Karnataka v. L.Muniswamy, (1997) 2 SCC 699** where the Supreme Court was considering the scope of inherent power of quashing the proceedings under section 482 of the Code. The Supreme Court held that in the exercise of this wholesome power, the High Court is entitled to quash proceedings if it comes to the conclusion that the ends of justice so require. It was further observed that in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceedings in the interest of justice and that the ends of justice are higher than the ends of mere law though justice had got to be administered according to laws made by the legislature. On facts of that case, it was observed that there was no reasonable likelihood of the accused being convicted of the offence. In the circumstances, the Supreme Court quashed the proceedings. This judgment has been consistently followed by the Supreme Court in later judgments. In **B.S.Joshi and others v. State of Haryana and another, (2003) 4 SCC 675,** while considering

similar question after relying on the judgment of the Supreme Court in L.Muniswamy's case (supra), the Supreme Court has even observed that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and section 320 of the Code does not limit or affect the powers under section 482 of the Code.

4. In the circumstances we pass the following order:

FIR No.MCR 02 of 2004 registered by the M.I.D.C. Police Station, Andheri East, Mumbai, against respondents 2 to 6 under the provisions of sections 406, 420 of the I.P.C. is quashed. Petition is disposed of. In view of this, private complaint filed by the petitioner also stands disposed of.

5. Authenticated copy of this order be supplied to the parties.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)